

REMARKS

Claims 4 and 5 are pending and under consideration, with claims 1-3 and 6 being withdrawn from consideration as being drawn to non-elected inventions. With this Amendment, Claims 1-6 are being canceled, without prejudice against their reintroduction into this or one or more timely filed continuation, divisional or continuation-in-part applications, and Claims 7-58 are being newly added. Thus, after entry of this Amendment, Claims 7-58 are pending and under consideration. The amendments of the claims and the various rejections raised in the Office Action are discussed in more detail, below.

The Amendments of the Claims

Claims 1-6 have been canceled. Elected claim 4 has been replaced by new claims 7 (directed to that portion of claim 4 dependent upon claim 2) and 31 (directed to that portion of claim 4 dependent upon claim 1). Elected claim 5 has been replaced by new claims 19 (directed to that portion of claim 5 dependent upon claim 2) and 45 (directed to that portion of claim 5 dependent upon claim 1). No new matter is added by virtue of new claims 7, 19, 31 and 45. Specifically, the labeled nucleotide of structural formula (VII) recited in new claims 7 and 31 is taught at, among other places, page 17, lines 19-25. The definition of B is taught at, among other places, page 18, lines 5-8; the proviso reciting the substituent that includes the linkage linking B to D at page 18, lines 8-9; and the definitions of W^1 , W^2 and W^3 at page 17, line 25.

In new claims 19 and 45, the labeled polynucleotide of structural formula (XI) is taught at, among other places, page 22, lines 1-4; the definition of B at page 22, lines 1-7 and 6-18; the proviso that recites the substituent that includes the linkage linking B to D at page 18, lines 8-9; the definition of Z^1 at page 22, line 7, the definition of Z^2 at page 22, lines 7-12 and 15; and the definition of Z^3 at page 22, lines 12-15.

In new claims 7 and 19, the specific 4,7-dichlororhodamine dye of structural formula (VI) is disclosed at, among other places, page 16, lines 1-4. The definitions of R^7 - R^{10} , R^{12} - R^{16} and R^{18} are taught at, among other places, page 16, lines 6-11; the definitions of R^{11} and R^{17} at page 16, lines 11-13; and the definitions of X^1 - X^3 at page 16, lines 14-15.

In new claims 31 and 45, the specific 4,7-dichlororhodamine dye of structural formula (I) is disclosed at, among other places, page 13, lines 8-10. The definitions of R^1 - R^6 are taught at, among other

places, page 13, lines 10-14; the definitions of Y¹-Y⁴ at page 13, lines 15-18; and the definitions of X¹-X³ at page 13, lines 18-19.

New dependent claims 8-18, 20-30, 32-44 and 46-58 focus on specific embodiments of linkage positions, linkages and dyes, etc., and are supported by at least the sections of the application as originally filed delineated below:

NEW CLAIMS	SUPPORT (page:lines)
8, 32	Page 18:14-18
9, 33	Page 18:1-2
10, 34	Page 18:3-4, page 19:1-5 (Formula IX)
11, 35	Page 18:21-23 (Formula VIII)
12, 24, 36, 50	Page 20:1-4
13, 25, 37, 51	Page 20:8 to end of page (Formulae X.1-X.6)
14, 26	Page 16:16-17 in connection with page 8:14 teaching that the linkage between B and D is preferably through X ² or X ³ .
15, 27	Page 16:9
16, 28	Page 16:13
17, 29	Page 16:13
18, 30	Page 16:17-19
20, 46	Page 22: 18-19 in connection with page 18:14-18
21, 47	Page 22:20
22, 48	Page 22:21
23, 49	Page 22:21
38, 52	Page 13:20-21 in connection with page 18:14 teaching that the linkage between B and D in preferably through X ² or X ³ .
39, 53	Page 14:1-3; Formula II where R is hydrogen (dJON)
40, 54	Page 14:1-4; Formula II where R is methyl (DMD)
41, 55	Page 14:5 to end of page; Formula III (dR650)
42, 56	Page 15:1-5; Formula IV where R is -(CH ₂) ₅ -COOH (dJODA)
43, 57	Page 15:1-5; Formula IV where R is -CH ₂ -Ph-COOH (dR134)
44, 58	Page 15:6 to end of page; Formula V (dR139)

Accordingly, new dependent claims 8-18, 20-30, 32-44 and 46-58 do not add new matter.

Double Patenting Rejections

Claim 4 stands rejected under 35 USC § 101 as claiming the same invention as claim 24 of U.S. Patent No. 6,080,852 (the “‘852 patent”) and claim 5 stands rejected under the judicially-created doctrine of obviousness type double patenting as being unpatentable over claim 35 of the ‘852 patent.

The rejection under 35 USC § 101 is overcome by the redrafting of claim 4 into two separate claims, new claims 7 and 19 respectively. Any remaining issues of obviousness type double patenting are overcome by the Terminal Disclaimer being submitted herewith. Accordingly, withdrawal of the rejections of claims 4 and 5 is requested.

Conclusion

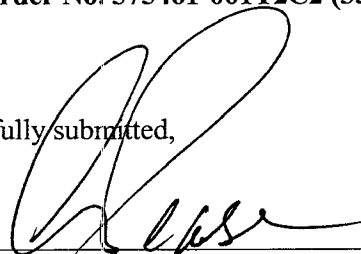
Claims 7-58 are believed to satisfy all of the criteria for patentability and are believed to be in condition for allowance. An early indication of the same is therefore kindly requested.

No fees beyond the claims, Extension of Time and Terminal Disclaimer fees authorized in the associated papers being submitted herewith are believed to be due in connection with this Amendment. However, the Director is authorized to charge any additional fees that may be required, or credit any overpayment, to Dechert LLP Deposit Account No. 50-2778 (**Order No. 375461-001T2C2 (355294)**).

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Respectfully submitted,



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